

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 144 OF 2007

KIIRYA HILLARY ::: PLAINTIFF

VERSUS

- | | | |
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| 1. THE NEW VISION PRINTING
& PUBLISHING COMPANY
LTD. | } | |
| 2. THE EDITOR IN CHIEF
NEW VISION PRINTING
& PUBLISHING CO. LTD. | ::: } :::::::::: | DEFENDANTS |

BEFORE: AG. JUDGE REMMY K. KASULE

RULING

In the course of re-examination of the plaintiff by his counsel, it transpired that the plaintiff was relying, in support of his case, on a document, other than the one agreed upon at the scheduling conference.

Ms Kabatuzi Rita, learned counsel for the defendant objected to this reliance on this other document.

This ruling is in respect of the objection. At scheduling, a Monitor newspaper article entitled “OTAFIIRE CITED IN CENTENARY PARK LAND ROW” dated 29.01.07 was admitted by consent. The same was tendered in evidence as Exhibit D1.

This newspaper article is alleged to have been the cause of the plaintiff’s dismissal from the New Vision. The New vision management suspected that the plaintiff had furnished this article to the Monitor, when the same was prepared for the New Vision newspaper which employed the plaintiff.

In cross-examination the plaintiff denied being the author of the article. He claimed he had got it from the Monitor website. He intended to use the article for his story to be filed with the New Vision. In re-examination plaintiff attempted to put in a print out of the article he had accessed from the Monitor website.

Defence counsel relying on order 6 Rule 1 objected to the plaintiff's putting in evidence this print out. According to defence Counsel, Plaintiff is departing from his pleadings and is raising a new ground of claim. This is not the case the defendant prepared to answer. It is thus prejudicial to defence. The court, pursuant to section 135 of the Evidence Act, Cap. 6, should exercise its discretion by refusing to admit the document.

In opposition to the objection, plaintiff's learned Counsel Robert Bautu, submitted that in the course of hearing the issue as to what article the plaintiff actually wrote had come up. In order for Court to resolve this issue it is necessary that what the plaintiff wrote and did not write is on record as evidence. Then court would be in a position to resolve whether plaintiff's dismissal was or was not justified.

The defendant was not being taken by surprise because the document sought to be admitted as an exhibit had been filed in Court on 29.06.07 and served on defence counsel on 02.07.07.

In the considered view of court, the issue whether the plaintiff authored the article that was the cause for his dismissal by the defendant is very relevant to the plaintiff's case.

Any damage or prejudice that the defendant is likely to suffer by the late admission of the document that the plaintiff claims he authored can be stopped or greatly minimised by affording the defendant time to take instructions on the document and, if necessary, recalling the plaintiff for further cross-examination.

The dictates of justice enjoin this court to allow the plaintiff tender in evidence the documents that he claims he authored and those that he says he did not author. The document in dispute is

one of those Plaintiff will thus be allowed to tender the same as part of his evidence. It is so ordered.

The defendant is at liberty, if it is the defendant's wish, to seek for time to get instructions on the document and also to cross-examine further the plaintiff on the said document.

The preliminary objection is dismissed. Costs shall be in the cause as the hearing of the suit is still going on.

Remmy K. Kasule

Ag. Judge

11.10.07